



## INVITATION FOR BIDS

SOLICITATION NO. DHMH OPASS – 12-10885-REVISED

**Issue Date: April 11, 2012**

### **NURSING HOME ADMINISTRATOR DEER'S HEAD HOSPITAL CENTER**

#### **NOTICE**

Prospective Bidders who have received this document from the Department of Health and Mental Hygiene's web site or eMarylandMarketplace.com, or who have received this document from a source other than the Procurement Officer, and who wish to assure receipt of any changes or additional materials related to this IFB, should immediately contact the Procurement Officer and provide their name and mailing address so that amendments to the IFB or other communications can be sent to them.

**Minority Business Enterprises are Encouraged to Respond to this Solicitation**

**STATE OF MARYLAND  
NOTICE TO BIDDERS/CONTRACTORS**

In order to help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, we ask that you take a few minutes and provide comments and suggestions regarding the enclosed solicitation. Please return your comments with your bids. If you have chosen not to bid on this Contract, please fax this completed form to: 410-333-5958 to the attention of the Procurement Officer.

**Title: Nursing Home Administrator**

**Solicitation No: DHMH OPASS – 12-10885-REVISED**

1. If you have responded with a "no bid", please indicate the reason(s) below:

- ☐ Other commitments preclude our participation at this time.
- ☐ The subject of the solicitation is not something we ordinarily provide.
- ☐ We are inexperienced in the work/commodities required.
- ☐ Specifications are unclear, too restrictive, etc. (Explain in REMARKS section.)
- ☐ The scope of work is beyond our present capacity.
- ☐ Doing business with Maryland Government is simply too complicated. (Explain in REMARKS section.)
- ☐ We cannot be competitive. (Explain in REMARKS section.)
- ☐ Time allotted for completion of the bid/proposals is insufficient.
- ☐ Start-up time is insufficient.
- ☐ Bonding/Insurance requirements are restrictive. (Explain in REMARKS section.)
- ☐ Bid requirements (other than specifications) are unreasonable or too risky. (Explain in REMARKS section.)
- ☐ MBE requirements. (Explain in REMARKS section.)
- ☐ Prior State of Maryland Contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section.)
- ☐ Payment schedule too slow.
- ☐ Other: \_\_\_\_\_

2. If you have submitted a bid, but wish to offer suggestions or express concerns, please use the Remarks section below. (Use reverse or attach additional pages as needed.)

REMARKS:

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Offeror Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_

**KEY INFORMATION SUMMARY SHEET**

**STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
Invitation for Bids**

**NURSING HOME ADMINISTRATOR**

**Solicitation Number: DHMH OPASS – 12-10885-REVISED**

**IFB Issue Date:** April 11, 2011

**IFB Issuing Office:** Maryland Department of Health and Mental Hygiene

**Procurement Officer:** Sharon R. Gambrill, CPPB  
Office of Procurement and Support Services  
201 W. Preston St., Room 416B  
Baltimore, MD 21201  
Office Phone: (410) 767-5816  
Fax: (410) 333-5958  
e-mail: [gambrills@dhmh.state.md.us](mailto:gambrills@dhmh.state.md.us)

**Contract Monitor:** Mary Beth Waide  
Deer's Head Hospital Center  
351 Deer's Head Hospital Rd., PO Box 2018  
Salisbury, MD 21802  
Office phone: (410) 543-4011  
Fax: (410) 543-4110  
e-mail: [mwaide@dhmh.state.md.us](mailto:mwaide@dhmh.state.md.us)

**Bids are to be sent to:** Sandi Perry, Agency Procurement Specialist  
Deer's Head Hospital Center  
P O Box 2018  
Salisbury, MD 21802  
Office Phone: (410) 543-4084  
Fax: (410) 543-4004  
e-mail: [srperry@dhmh.state.md.us](mailto:srperry@dhmh.state.md.us)

**Pre-Bid Conference:** N/A

**Closing Date and Time:** Tuesday, May 1, 2012@ 2:00 p.m.



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## SECTION 1 - GENERAL INFORMATION

### 1.1 Summary Statement

- 1.1.1 The Maryland Department of Health and Mental Hygiene (DHMH), Office of Procurement and Support Services is issuing this Invitation for Bids to obtain the services of a qualified Nursing Home Administrator (NHA) to provide oversight of the operation of Deer's Head Hospital Center (DHHC) and to ensure that DHHC maintains compliance with all applicable federal, state, and local laws and regulations governing comprehensive care facilities (CCF).

Deer's Head Hospital Center (DHHC) is a unit of the Maryland Department of Health and Mental Hygiene (DHMH), located at 351 Deer's Head Hospital Road in Salisbury, Maryland.

DHHC is a chronic care hospital licensed and accredited for the treatment and rehabilitation of the chronically ill. DHHC includes an inpatient chronic disease/acute care hospital, a nursing home unit, an outpatient renal dialysis unit and an outpatient physical/occupational therapy unit.

The current census is composed of 15 chronically ill patients, 77 nursing home residents on an inpatient (residential) basis and approximately 150 patients on an outpatient services basis. DHHC employs 350 permanent and contractual State employees combined.

- 1.1.2 It is the State's intention to obtain services, as specified in this Invitation for Bids, from a Contract between the successful Bidder and the State.
- 1.1.3 The Department intends to make single award as a result of this IFB.
- 1.1.4 Bidders must be able to provide all services and meet all of the requirements requested in this solicitation.

### 1.2 Abbreviations and Definitions

For purposes of this IFB, the following abbreviations or terms have the meanings indicated below:

- 1.2.1 **Bidder** – An entity that submits a bid in response to this IFB.
- 1.2.2 **CCF** – Comprehensive Care Facility
- 1.2.3 **COMAR** – Code of Maryland Regulations available on-line at [www.dsd.state.md.us](http://www.dsd.state.md.us)
- 1.2.4 **Contract** – The Contract awarded to the successful Bidder pursuant to this IFB. The Contract will be in the form of Attachment A.
- 1.2.5 **Contract Monitor (CM)** – The State representative for this project that is primarily responsible for Contract administration functions, including issuing written direction, contract modification, invoice approval, compliance with terms and conditions, monitoring this project to ensure compliance with the terms and conditions of the Contract and in achieving on budget/on time/within scope completion of the project.
- 1.2.6 **Contractor** – The selected Bidder that is awarded a Contract by the State.
- 1.2.7 **DHHC** - Deer's Head Hospital Center
- 1.2.8 **DHMH or the Department** – Maryland Department of Health and Mental Hygiene.
- 1.2.9 **IFB** – Invitation for Bid
- 1.2.10 **JCAHO** – Joint Commission on Accreditation of Healthcare Organizations

1.2.11 **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland.

1.2.12 **MBE** – A Minority Business Enterprise certified by the Maryland Department of Transportation under COMAR 21.11.03.

1.2.13 **Normal State Business Hours** - Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) - keyword State Holidays.

1.2.14 **Procurement Officer** – The State representative for the resulting Contract. The Procurement Officer is responsible for the Contract and is the only State representative that can authorize changes to the Contract. DHMH may change the Procurement Officer at any time by written notice to the Contractor.

1.2.15 **State** – “State” means the State of Maryland.

### **1.3 Contract Type**

The Contract resulting from this IFB shall be an indefinite quantity contract in accordance with COMAR 21.06.03.02.

### **1.4 Contract Duration**

The Contract resulting from this IFB shall be for a period of seventy-eight (78) weeks. The Contractor shall provide services upon receipt of a Notice to Proceed from the Contract Monitor.

### **1.5 Procurement Officer**

The sole point of contact in the State for purposes of this IFB prior to the award of any Contract is the Procurement Officer at the address listed below:

Sharon R. Gambrill, CPPB  
Maryland Department of Health and Mental Hygiene  
Office of Procurement and Support Services  
201 West Preston Street – Room 416B  
Baltimore, Maryland 21201  
Phone Number: 410-767-5816  
Fax Number: 410-333-5958  
E-mail: [gambrills@dhmh.state.md.us](mailto:gambrills@dhmh.state.md.us)

DHMH may change the Procurement Officer at any time by written notice.

### **1.6 Contract Monitor**

The Contract Monitor is:

Mary Beth Waide  
Maryland Department of Health and Mental Hygiene  
Deer's Head Hospital Center  
351 Deer's Head Hospital Rd., PO Box 2018  
Salisbury, MD 21802  
Phone Number: (410) 543-4011  
Fax Number: (410) 543-4110  
Email: [mwaide@dhmh.state.md.us](mailto:mwaide@dhmh.state.md.us)



DHMH may change the Contract Monitor at any time by written notice.

## **1.7 Pre-Bid Conference – N/A**

## **1.8 eMarylandMarketplace**

Each Bidder must indicate their eMaryland Marketplace vendor number in the Transmittal Letter (cover letter) submitted at the time of their Bid submission to this IFB.

eMM is an electronic commerce system administered by the Maryland Department of General Services. In addition to using the DHMH web site (<http://www.dhmh.md.gov/procumnt/procopps.html>) and other means for transmitting the IFB and associated materials of this solicitation, Bidder questions and the Procurement Officer's responses, addenda, and other solicitation related information will be provided via eMaryland Marketplace.

In order to receive a contract award, a vendor must be registered on eMaryland Marketplace (eMM). Registration is free. Go here to register: <https://ebidmarketplace.com/>. Click on "Registration" to begin the process and follow the prompts.

## **1.9 Questions**

Written questions from prospective Bidders will be accepted by the **Contract Officer, Theresa B. Ammons, CPPB ([tammons@dhmh.state.md.us](mailto:tammons@dhmh.state.md.us))**. Questions may be submitted by mail, facsimile, or preferably, by e-mail to the **Contract Officer listed above with a copy to the Agency Procurement Specialist, Sandi Perry**.

Questions should be submitted in a timely manner prior to the bid due date to the Contract Officer with a copy to the Agency Procurement Specialist. Time permitting, answers to all substantive questions that have not previously been answered, and are not clearly specific only to the requestor, will be distributed to all vendors who are known to have received a copy of the IFB.

## **1.10 Bids Due (Closing) Date**

The bids must be received by the Agency Procurement Specialist, at the address listed on the Key Information Summary Sheet no later than **2:00 p.m. Local Time on Tuesday, May 1, 2012** in order to be considered. **Bidders must either use FedEx or hand-deliver bids.**

Requests for extension of this time or date will not be granted. Bidders mailing proposals should allow sufficient mail delivery time to ensure timely receipt by the DHHC Procurement Officer. Except as provided in COMAR 21.05.03.02, bids received after the due time/date, **Tuesday, May 1, 2012 2:00 p.m. Local Time will not be considered.**

Bids may be modified or withdrawn by written notice received by the DHHC Procurement Officer before the time and date set for the opening.

**Bids may not be submitted by e-mail or facsimile.**

## **1.11 Duration of Offer**

Bids submitted in response to this IFB are irrevocable for 120 days following the closing date of the bids. This period may be extended at the Procurement Officer's request only with the Bidder's written agreement.

### **1.12 Revisions to the IFB**

If it becomes necessary to revise this IFB before the due date for bids, amendments to the IFB will be posted on the DHMH Current Procurements web page and through eMarylandMarketplace. Amendments made after the due date for bids will be sent only to those Bidders who submitted a timely bid.

Acknowledgment of the receipt of all amendments to this IFB issued before the bid due date must accompany the bid in the Transmittal Letter accompanying the Bid. Acknowledgement of the receipt of amendments to the IFB issued after the bid due date shall be in the manner specified in the amendment notice. Failure to acknowledge receipt of amendments does not relieve the Bidder from complying with all terms of any such amendment.

### **1.13 Cancellations**

The State reserves the right to cancel this IFB, accept or reject any and all bids, in whole or in part, received in response to this IFB.

### **1.14 Incurred Expenses**

The State will not be responsible for any costs incurred by any Bidder in preparing and submitting a bid or in performing any other activities relative to this solicitation.

### **1.15 Protest/Disputes**

Any protest or dispute related respectively to this solicitation or the resulting Contract shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

### **1.16 Bidder Responsibilities**

The selected Bidder shall be responsible for all products and services required by this IFB. All subcontractors must be identified and a complete description of their role relative to the bid must be included in the bid. If a Bidder that seeks to perform or provide the services required by this IFB is subsidiary of another entity, all information submitted by the Bidder, such as but not limited to, references and financial reports, shall pertain exclusively to the Bidder, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Bidder's bid must contain an explicit statement that the parent organization will guarantee the performance of the subsidiary.

### **1.17 Mandatory Contractual Terms**

By submitting a Bid in response to this IFB, a Bidder, if selected for award, shall be deemed to have accepted the terms of this IFB and the Contract, attached as Attachment A. A Bidder that takes exception to these terms shall have his bid rejected.

### **1.18 Bid/Proposal Affidavit**

A bid submitted by a Bidder must be accompanied by a completed Bid/Proposal Affidavit. A copy of this Affidavit is included as Attachment B of this IFB.



### **1.19 Contract Affidavit**

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Bidder will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as Attachment C of this IFB. This Affidavit must be provided within five business days of notification of proposed Contract award, however, to expedite processing, we suggest that this document be completed and submitted with the Bid.

### **1.20 Minority Business Enterprises**

A minimum overall MBE subcontractor participation goal of 0 % has been established for the services resulting from this contract.

### **1.21 Arrearages**

By submitting a response to this solicitation, each Bidder represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of the Contract if selected for Contract award.

### **1.22 Procurement Method**

This Contract will be awarded in accordance with the Competitive Sealed Bidding method at COMAR 21.05.02.

### **1.23 Verification of Registration and Tax Payment**

Before a corporation can do business in the State it must be registered with the Department of Assessments and Taxation, State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. It is strongly recommended that any potential Bidder complete registration prior to the due date for receipt of proposals. A Bidder's failure to complete registration with the Department of Assessments and Taxation may disqualify an otherwise successful Bidder from final consideration and recommendation for Contract award.

### **1.24 False Statements**

Bidders are advised that the Maryland Code Annotated, State Finance and Procurement Article, § 11-205.1 provides as follows:

1.24.1 In connection with a procurement contract a person may not willfully:

- (a) Falsify, conceal, or suppress a material fact by any scheme or device;
- (b) Make a false or fraudulent statement or representation of a material fact; or
- (c) Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

1.24.2 A person may not aid or conspire with another person to commit an act under subsection (1) of this section.

1.24.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five years or both.



## 1.25 Payments by Electronic Funds Transfer

By submitting a response to this solicitation, the Bidder agrees to accept payments by electronic funds transfer unless the State Comptroller's Office grants an exemption (mandatory for all procurements exceeding \$100,000). The selected Bidder shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form. Any request for exemption must be submitted to the State Comptroller's Office for approval at the address specified on the COT/GAD X-10 form and must include the business identification information as stated on the form and include the reason for the exemption. The COT/GAD X-10 form in PDF format may be downloaded off the Comptroller's Office Web site at: [http://compnet.comp.state.md.us/General\\_Accounting\\_Division/Static\\_Files/gadx-10.pdf](http://compnet.comp.state.md.us/General_Accounting_Division/Static_Files/gadx-10.pdf).

## 1.26 Prompt Payment Policy

This procurement and the contracts to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Minority Affairs and dated August 1, 2008. Promulgated pursuant to the Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and Code of Maryland Regulations (COMAR) 21.01.01.03 and 21.11.03.01 et seq., the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The successful Bidder to this solicitation who is awarded a contract must comply with the prompt payment requirements outlined in the Contract, sub-section 31-Prompt Payment. Additional information is available on GOMA's Web site at: [http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs\\_000.pdf](http://www.mdminoritybusiness.com/documents/PROMPTPAYMENTFAQs_000.pdf).

## 1.27 Living Wage Requirements

A solicitation for services under a State Contract valued at \$100,000 or more may be subject to Title 18, State Finance and Procurement Article, Annotated Code of Maryland (SFP). Additional information regarding the State's living wage requirement is contained in **Attachment G**. If a Bidder fails to complete and submit the required documentation, the State may determine a Bidder to be not responsible under State law.

Contractors and Subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State. The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to SFP §18-102 (d) shall assign the tier based upon where the recipients of the services are located.

The Contract resulting from this solicitation will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Bidder must identify in its Bid the location(s) from which services will be provided.

- If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
- If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.



**If the Contractor provides more than 50% of the services from an out-of-State location, then the Contract will be deemed to be a Tier 1 contract.** The Bidder must identify in its Bid the location(s) from which 50% or more of the Contract services will be provided.

Information pertaining to reporting obligations may be found by going to the DLLR Website <http://www.dllr.state.md.us/> and clicking on Living Wage.

### **1.28 Federal Funding Acknowledgement**

- 1.28.1 There are not programmatic conditions that apply to this contract, regardless of the type of funding.
- 1.28.2 The total amount of Federal funds allocated for the DHHC is \$0 in Maryland State fiscal year 2011-2013. This represents 0% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or Invitation for Bid.
- 1.28.3 This contract does not contain federal funds. Acceptance of this agreement indicates your intent to comply with all conditions, which are part of this agreement.

### **1.29 Conflict of Interest Affidavit and Disclosure**

All Bidders are advised that if a Contract is awarded as a result of this solicitation, the successful Contractor's personnel and each of the participating subcontractor personnel shall be required to complete agreements such as Attachment E Conflict of Interest Affidavit and Disclosure. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

### **1.30 Non-Disclosure Agreement**

All Bidders are advised that this solicitation and any resultant Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as Attachment F. Bidders shall complete and sign the NDA (Attachment F) and submit it with their Bid.

### **1.31 HIPAA - Business Associate Agreement**

Based on the determination by DHMH that the functions to be performed in accordance with Section 2 of this IFB constitute Business Associate functions as defined in HIPAA, the bidder shall execute a business associate agreement as required by HIPAA regulations at 45 CFR §164.501 and set forth in Appendix . The fully executed business associate agreement must be submitted within 10 working days after notification of award or award of contract, whichever is earlier. Should the Business Associate Agreement not be submitted upon expiration of the ten-day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the next lowest bidder.

### **1.32 Electronic Procurements Authorized**

- A Under COMAR 21.03.05, unless otherwise prohibited by law, the Department of Health & Mental Hygiene (DHMH) may conduct procurement transactions by electronic means, including the solicitation, bidding, award, execution, and administration of a contract, as provided in the Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21, Annotated Code of Maryland.

- B. Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the bidder/offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the RFP or the Contract.
- C. "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, electronic mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g. eMarylandMarketplace.com), and electronic data interchange.
- D. In addition to specific electronic transactions specifically authorized in other sections of this RFP (e.g. §1.30 related to EFT) and subject to the exclusions noted in section E of this subsection, the following transactions are authorized to be conducted by electronic means on the terms described:
  - 1. The Procurement Officer may conduct the procurement using eMarylandMarketplace, e-mail or facsimile to issue:
    - (a) the solicitation (e.g. the RFP);
    - (b) any amendments;
    - (c) pre-proposal conference documents;
    - (d) questions and responses;
    - (e) communications regarding the solicitation or proposal to any Offeror or potential Offeror including requests for clarification, explanation, or removal of elements of an Offeror's proposal deemed not acceptable;
    - (f) notices of award selection or non-selection; and
    - (g) the Procurement Officer's decision on any protest or Contract claim.
  - 2. An Offeror or potential Offeror may use e-mail or facsimile to:
    - (a) ask questions regarding the solicitation;
    - (b) reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer;
    - (c) request a debriefing; or,
    - (d) submit a "No Bid Response" to the solicitation.
  - 3. The Procurement Officer, the State's Contract Monitor and the Contractor may conduct day-to-day Contract administration, except as outlined in section 5 of this subsection utilizing e-mail, facsimile or other electronic means if authorized by the Procurement Officer or Contract Manager.
- E. The following transactions related to this procurement and any Contract awarded pursuant to it are *not authorized* to be conducted by electronic means:
  - 1. submission of initial bids or proposals;
  - 2. filing of protests;
  - 3. filing of Contract claims;
  - 4. submission of documents determined by DBM to require original signatures (e.g. Contract execution, Contract modifications, etc); or
  - 5. any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor, Bidder or Offeror be provided in writing or hard copy.
- F. Any facsimile or electronic mail transmission is only authorized to the facsimile numbers or electronic mail addresses for the identified person as provided in the RFP, the Contract, or in the direction from the Procurement Officer or Contract Monitor.



## SECTION 2 – SCOPE OF WORK

### 2.1 Purpose

- 2.1.1 The State is issuing this solicitation for the purposes outlined in Section 1.1 of this IFB.

### 2.2 Bidder Minimum Qualifications

Bidders must provide proof with their Bid that the following minimum qualifications have been met:

- 2.2.1 Possess and provide verification of a current Maryland Nursing Home Administrators license to practice in the State of Maryland as issued by the Maryland State Board of Examiners of Nursing Home Administrators.
- 2.2.2 Possess and provide verification of a minimum of five (5) years of experience in a skilled nursing home facility.
- 2.2.3 Possess a Maryland Preceptor certification as issued by the Maryland State Board of Examiners of Nursing Home Administrators.

### 2.3 Scope of Work - Requirements

The Contractor shall:

- 2.3.1 Provide oversight of the operation of DHHC to maintain DHHC's compliance with all applicable federal, state, and local laws and regulations governing CCFs. This may include, but not be limited to, establishing and implementing policies, procedures, and manuals.
- 2.3.2 Oversees the delivery of high quality of care and services to nursing home residents to meet their medical, spiritual and social needs.
- 2.3.3 Maintain their NHA license and Preceptor certification.
- 2.3.4 Ensures DHHC complies with COMAR Title 10, HIPPA, Center for Medicare and Medicaid services (CMS), Office of Health Care Quality and JCAHO regulations and standards
- 2.3.5 Provide, implement and enforce Residents Bill of Rights. Coordinate and track investigations of variances and apply corrective action.
- 2.3.6 Participate on teams for Utilization Review, Quality Assurance and Peer Review procedures.
- 2.3.7 Comply with signatures required as the DHHC NHA on all documentation requirements of the State as well as funding and regulatory agencies
- 2.3.8 Provide training as a Preceptor to DHHC AIT program including up to 5 DHHC staff to prepare them to successfully meet the qualifications as a Maryland NHA
- 2.3.9 Act as the liaison between DHHC and Office of Health Care Quality or Area Ombudsman
- 2.3.10 Perform and facilitate additional clinical, consultative, and/or mandated services or activities as needed.
- 2.3.11 Utilize computer applications as deemed necessary in the data collection and retrieval of patient management and records. Maintain the accuracy of these records.
- 2.3.12 Services and work provided under this contract are an estimated average of 24 hours per week. This is an estimate only. It is not a guarantee of a minimum or maximum quantity of hours under the Contract.

- 2.2.13 Prior to beginning services under this contract the Maryland Nursing Home Administrator shall provide verification of a medical examination to include Hepatitis B, Flu vaccine and Tuberculosis test acceptable for licensure standards.

## **2.4 Security Requirements**

### **2.4.1 Employee Identification**

- (a) Each person who is an employee or agent of the Contractor or subcontractor shall display his or her company ID badge at all times while on State premises. Upon request of authorized State personnel, each such employee or agent shall provide additional photo identification.
- (b) At all times at any facility, the Contractor's personnel shall cooperate with State site requirements that include but are not limited to being prepared to be escorted at all times, providing information for badge issuance, and wearing the badge in a visual location at all times.

### **2.4.2 Information Technology**

- (a) Contractors shall comply with and adhere to the State IT Security Policy and Standards. These policies may be revised from time to time and the Contractor shall comply with all such revisions. Updated and revised versions of the State IT Policy and Standards are available on-line at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.
- (b) The Contractor shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State. The contractor shall fill-out any necessary paperwork as directed and coordinated with the CM to obtain approval by the State to connect Contractor-owned equipment to a State LAN/WAN.

### **2.4.3 Criminal Background Check**

The Contractor shall obtain from each prospective employee a signed statement permitting a criminal background check. The Contractor shall secure at its own expense a Maryland State Police and/or FBI background check and shall provide the Department's Contract Monitor with completed checks on all new employees prior to assignment. The Contractor may not hire an employee with a criminal record unless prior written approval is obtained from the Department.

## **2.5 Payment Type**

- 2.5.1 Payments will be made as partial payments as set forth herein. In no case will any payment be viewed as a progress payment.

## **2.7 Invoicing**

### **2.7.1 General**

- (a) All invoices for services shall be signed by the Contractor and submitted to the Contract Monitor, identified in the Key Information Summary Sheet, and include the following information:
  - Contractor name
  - Remittance address
  - Federal taxpayer identification number (or if sole proprietorship individual's social security number)
  - Invoice period



- Invoice date
- Invoice number
- State assigned Contract number
- State assigned (Blanket) Purchase Order number(s)
- Goods or services provided
- Time charged to the nearest tenth of an hour

Invoices submitted without the required information can not be processed for payment until the Contractor provides the required information.

- (b) The Department reserves the right to reduce or withhold contract payment in the event the contractor does not provide the Department with all required deliverables within the time frame specified in the contract or in the event that the contractor otherwise materially breaches the terms and conditions of the contract until such time as the contractor brings itself into full compliance with the contract. Any action on the part of the Department, or dispute of action by the contractor, shall be in accordance with the provisions of Md. Code Ann. St. Fin. & Proc. §15-215 through §15-223 and with COMAR 21.10.02.
- (c) Contractor shall have a process for resolving billing errors.

#### 2.7.2 Invoice Submission Schedule

The Contractor shall bill the Department monthly (no later than the 15<sup>th</sup> day of each month) in triplicate, certifying thereto that the work and services have been performed, that payment for said work has not been received, and that the amount specified is due and owing.

### 2.8 Insurance Requirements

- 2.8.1 The Contractor shall maintain Commercial General Liability Insurance with limits sufficient to cover losses resulting from or arising out of Contractor action or inaction in the performance of the Contract by the Contractor, its agents, servants, employees or subcontractors, but no less than a Combined Single Limit for Bodily Injury, Property Damage and Personal and Advertising Injury Liability of \$1,000,000 per occurrence and \$3,000,000 aggregate.
- 2.8.2 Upon execution of a Contract with the State, Contractor shall provide the Contract Monitor with current certificates of insurance, and shall update such certificates from time to time, as directed by the Contract Monitor. Such copy of the Contractor's current certificate of insurance shall contain at minimum the following:
  - a. Worker's Compensation - The Contractor shall maintain such insurance as necessary and/or as required under Worker's Compensation Acts, the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act.
  - b. Commercial General Liability as required in sub-part 2.8.1.
- 2.8.3 The State shall be named as an additional named insured on the policies with the exception of Worker's Compensation Insurance. Certificates of insurance evidencing coverage shall be provided prior to the commencement of any activities in the Contract. All insurance policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Monitor, by certified mail, not less than 60 days advance notice of any non-renewal, cancellation, or expiration. In the event the Contract Monitor receives a notice of non-renewal, the Contractor shall provide the Contract Monitor with an insurance policy from another carrier at least 30 days prior to the expiration of the insurance policy then in effect. All insurance policies shall be with a company licensed by the State to do business and to provide such policies.



- 2.8.4 The Contractor shall require that any subcontractors obtain and maintain similar levels of insurance and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

## **2.9 Problem Escalation Procedure**

- 2.9.1 The Contractor must provide and maintain a Problem Escalation Procedure for both routine and emergency situations. This Procedure must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.

The Contractor shall provide contact information to the Contract Monitor as well as other personnel should the Contract Monitor not be available.

- 2.9.2 The Contractor must provide a Problem Escalation Procedure no less than 10 days prior to the beginning of the contract, and within 10 days after the start of each contract year (and within 10 days after any change in circumstance which changes the Procedure). The Problem Escalation Procedure shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Details shall include:

- The process for establishing the existence of a problem,
- The maximum duration that a problem may remain unresolved at each level before automatically escalating to a higher level for resolution,
- Circumstances in which the escalation will occur in less than the normal timeframe,
- The nature of feedback on resolution progress, including the frequency of feedback,
- Identification of and contact information for progressively higher levels that would become involved in resolving a problem,
- Contact information for persons responsible for resolving issues after normal business hours (*i.e.*, evenings, weekends, holidays, etc.) and on an emergency basis, and
- A process for updating and notifying the Contract Monitor of any changes to the Problem Escalation Procedure.

## SECTION 3 – BID FORMAT

### 3.1 One Part Submission

Bidders shall submit bids, all minimum qualification documentation and all Additional Required Submissions (see 3.4 of this Section) in a single sealed envelope.

### 3.2 Labeling

Each Bidder is required to label the sealed bid. The bid shall bear the IFB title and number, name and address of the Bidder and closing date and time for receipt of the bids.

### 3.3 Bid Completion

The Bid shall contain all price information in the format specified on the Bid Page (Attachment D). Complete the price sheets only as provided in the Bid Instructions. Do not amend, alter or leave blank any items on the Bid Page. If option years are included, Bidders must submit Bids for each option year. Failure to adhere to any of these instructions may result in the Bid being determined non-responsive and rejected by the Department.

### 3.4 Additional Required Submissions

#### 3.4.1 Transmittal Letter

A transmittal letter shall accompany the Bid. The purpose of this letter is to transmit the bid and acknowledge the receipt of any addenda. The transmittal letter should be brief and signed by an individual who is authorized to commit the Bidder to the services and requirements as stated in this IFB. See Bidder's responsibilities in Section 1.16.

3.4.2 Completed Bid Page (Attachment D) Submit three copies with original signatures.

3.4.3 Completed Bid/Proposal Affidavit (Attachment B) Submit three copies with original signatures.

3.4.4 Completed Contract Affidavit (Attachment C) Submit three copies with original signatures.

3.4.5 Other Attachments (\*when appropriate) Submit three copies with original signatures.

- (a) Conflict of Interest Affidavit (Attachment E)\*
- (b) Non-Disclosure Agreement (Attachment F)\*
- (c) Maryland Living Wage Requirements Affidavit (Attachment G-1)\*
- (d) Business Associate Agreement (Attachment H)\*

#### 3.4.6 Other Required Documentation

##### 3.4.6.1 References

- (a) Three recent references for work of a similar scope and size within the past five years. Each reference must include name of contact, address, telephone number and, if possible, e-mail address.

**N.B. The Department reserves the right to contact and consider references obtained through other means.**



- (b) As part of its bid, each Bidder is to provide a list of all contracts with any entity of the State of Maryland that it is currently performing or which have been completed within the last 5 years. For each identified contract, the Bidder is to provide:

- I. The State contracting entity
- II. A brief description of the services/goods provided
- III. The dollar value of the contract
- IV. The term of the contract
- V. The State employee contact person (name, title, telephone number and if possible e-mail address)
- VI. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the bidder's level of performance on State contracts will be considered as part of the responsibility determination by the Procurement Officer.

#### 3.4.6.2 Financial Capability Statements

The Bidder shall include Financial Statements, specifically, an abbreviated Profit and Loss (P&L) and an abbreviated Balance sheet for the last two years (independently audited preferred).

#### 3.4.6.3 Certificate of Insurance

The Bidder shall provide a copy of the Bidder's current certificate of insurance with the prescribed limits set forth in Section 2.8.

#### 3.4.6.4 Subcontractors

Bidders shall identify all subcontractors, excluding MBE which are identified separately, and the role these subcontractors will have in the performance of the Contract.

#### 3.4.6.5 Legal Action Summary – Describe:

- (a) Any outstanding legal actions or potential claims against the Bidder;
- (b) Any settled or closed legal actions or claims against the Bidder over the past five years;
- (c) Any judgments against the Bidder within the past five years, including the case name, number, court and final ruling or determination from the court, and;
- (d) The judge and court location in instances where litigation is ongoing and the Bidder has been directed by the court not to disclose information.

## **SECTION 4 - ATTACHMENTS**

### **ATTACHMENT A – STANDARD CONTRACT**

The Contract is being included for “Informational Purposes) only. The Contract may, however, be signed and submitted with the bid to expedite the process. The successful Bidder’s contract will be counter-signed by the Department Secretary’s designee. Upon award, a fully ratified contract will be sent to the Contractor.

### **ATTACHMENT B – BID/PROPOSAL AFFIDAVIT**

This document must be completed and submitted with the Bidder’s Bid.

### **ATTACHMENT C – CONTRACT AFFIDAVIT**

This document is not required at time of Bid but is requested with Bid to expedite processing. If not received with Bid, Bidder has five working days to submit Affidavit to the Procurement Officer upon notification of “Apparent Winner” status.

### **ATTACHMENT D – BID PRICING INSTRUCTIONS AND BID PAGE**

Bid forms must be completed and submitted with the Bid.

### **ATTACHMENT E - CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE**

This document must be completed and submitted with the Bidder’s Bid.

### **ATTACHMENT F – NON-DISCLOSURE AGREEMENT**

This document must be completed and submitted with the Bidder’s Bid.

### **ATTACHMENT G - MARYLAND LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS**

#### **ATTACHMENT G-1 – MARYLAND LIVING WAGE REQUIREMENTS AFFIDAVITS**

This document must be completed and submitted with the Bidder’s Bid.

### **ATTACHMENT H – BUSINESS ASSOCIATE AGREEMENT**

This document must be completed and submitted with the Bidder’s Bid.



## ATTACHMENT A – CONTRACT

### NURSING HOME ADMINISTRATOR

THIS CONTRACT (the “Contract”) is made this (day) day of (month), (year) by and between (contractor's name) and the STATE OF MARYLAND, acting through the DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OFFICE OF PROCUREMENT AND SUPPORT SERVICES.

In consideration of the promises and the covenants herein contained, the parties agree as follows:

#### 1. Definitions

In this Contract, the following words have the meanings indicated:

- 1.1 “Bid” means the Contractor’s Bid dated (date on bid).
- 1.2 “Contract Monitor” means the Department employee identified in the Key Information Summary Sheet as the Contract Monitor.
- 1.3 “Contractor” means (contractor's name) whose principal business address is (contractor's main address) and whose principal office in Maryland is (contractor's local address).
- 1.4 “Department” means the Maryland Department of Health and Mental Hygiene.
- 1.5 “IFB” means the Invitation for Bids for Nursing Home Administrator Solicitation # DHMH OPASS 12-10885, and any amendments thereto issued in writing by the State.
- 1.6 “Procurement Officer” means the Department employee identified in the Key Information Summary Sheet as the Procurement Officer.
- 1.7 “State” means the State of Maryland.

#### 2. Scope of Work

- 2.1 The Contractor shall provide all deliverables as defined in the IFB Section 2.3. These services shall be provided in accordance with the terms and conditions of this Contract and the following Exhibits, which are attached hereto and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall govern. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The IFB

Exhibit B – The Bid

Exhibit C – State Contract Affidavit, executed by the Contractor and dated \_\_\_\_\_

- 2.2 The Procurement Officer may, at any time, by written order, make changes in the work within the general scope of the Contract or the IFB. No other order, statement or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this

section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

- 2.3 Modifications to this Contract may be made provided (a) the modifications are made in writing; (b) all parties sign the modifications; and (c) approval by the required agencies, as described in COMAR, Title 21, is obtained.

### **3. Period of Performance.**

- 3.1 The Contract resulting from this IFB shall be for a period of 78 weeks beginning     (month, day, year)    , and ending     (month, day, year)    . The Contractor shall begin provision of services upon receipt of notification of award.

### **4. Consideration and Payment**

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted on the Bid Page (Attachment D). Unless properly modified (see above sub-section 2.3), payment to the Contractor pursuant to this Contract shall not exceed \$\_\_\_\_\_.
- 4.2 Payments to the Contractor shall be made no later than thirty (30) days after the Department's receipt of a proper invoice for services provided by the Contractor, acceptance by the Department of services provided by the Contractor, and pursuant to the conditions outlined in Section 4 of this Contract. Each invoice for services rendered must include the Contractor's Federal Tax Identification Number which is \_\_\_\_\_. Charges for late payment of invoices other than as prescribed at Md. Code Ann., State Finance and Procurement Article, § 15-104 are prohibited. Invoices shall be submitted to the Contract Monitor see Key Information Summary Sheet. Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.
- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Contractor's eMarylandMarketplace vendor ID number is \_\_\_\_\_.

### **5. Rights to Records**

- 5.1 The Contractor agrees that all documents and materials including but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations and data prepared by the Contractor, for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a deliverable under this Contract, and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a deliverable under this Contract are not works for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such



products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

## **6. Exclusive Use**

The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

## **7. Patents, Copyrights, Intellectual Property**

- 7.1 If the Contractor furnishes any design, device, material, process, or other item, which is covered by a patent, trademark or service mark, or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items.
- 7.2 The Contractor will defend or settle, at its own expense, any claim or suit against the State alleging that any such item furnished by the Contractor infringes any patent, trademark, service mark, copyright, or trade secret. If a third party claims that a product infringes that party's patent, trademark, service mark, trade secret, or copyright, the Contractor will defend the State against that claim at Contractor's expense and will pay all damages, costs and attorney fees that a court finally awards, provided the State (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations. The obligations of this paragraph are in addition to those stated in Section 7.3 below.
- 7.3 If any products furnished by the Contractor become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement, the Contractor will, at its option and expense: a) procure for the State the right to continue using the applicable item, b) replace the product with a non-infringing product substantially complying with the item's specifications, or c) modify the item so that it becomes non-infringing and performs in a substantially similar manner to the original item.

## **8. Confidentiality**

Subject to the Maryland Public Information Act and any other applicable laws, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems) shall be held in absolute confidence by the other party. Each party shall, however, be permitted to disclose relevant confidential information to its officers, agents and employees to the extent that such disclosure is necessary for the performance of their duties under this Contract, provided that the data may be collected, used, disclosed, stored and disseminated only as provided by and consistent with the law. The provisions of this section shall not apply to information that (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already in the possession of such party, (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information or (e) which such party is required to disclose by law.



## **9. Loss of Data**

In the event of loss of any State data or records where such loss is due to the intentional act or omission or negligence of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for recreating such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. Contractor shall use its best efforts to assure that at no time shall any actions undertaken by the Contractor under this Contract (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms and/or applications with which the Contractor is working hereunder.

## **10. Indemnification**

- 10.1 The Contractor shall hold harmless and indemnify the State from and against any and all losses, damages, claims, suits, actions, liabilities and/or expenses, including, without limitation, attorneys' fees and disbursements of any character that arise from, are in connection with or are attributable to the performance or nonperformance of the Contractor or its subcontractors under this Contract.
- 10.2 The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.3 The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.
- 10.4 The Contractor shall immediately notify the Procurement Officer of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from, or relating to, the Contractor's obligations under the Contract, and will cooperate, assist and consult with the State in the defense or investigation of any claim, suit, or action made or filed against the State as a result of, or relating to, the Contractor's performance under this Contract.

## **11. Non-Hiring of Employees**

No official or employee of the State, as defined under Md. Code Ann., State Government Article, § 15-102, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

## **12. Disputes**

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within 30 days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within 30 days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

## **13. Maryland Law**

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.



- 13.2 Any and all references to the Maryland Code, Annotated contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

#### **14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or disability of a qualified individual with a disability; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

#### **15. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

#### **16. Non-availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

#### **17. Termination for Cause**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

#### **18. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract; provided, however, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination.



Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12 (A)(2).

#### **19. Delays and Extensions of Time**

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

#### **20. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

#### **21. Pre-Existing Regulations**

In accordance with the provisions of Md. Code Ann., State Finance and Procurement Article, §11-206, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

#### **22. Financial Disclosure**

The Contractor shall comply with the provisions of Md. Code Ann., State Finance and Procurement Article, § 13-221, which requires that every person that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of the State certain specified information to include disclosure of beneficial ownership of the business.

#### **23. Political Contribution Disclosure**

The Contractor shall comply with Md. Code Ann., Election Law Article, §§14-101 - 14-108, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$100,000 or more, shall, file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

#### **24. Documents Retention and Inspection Clause**

The Contractor and sub-contractors shall retain and maintain all records and documents relating to this contract for a period of five (5) years after final payment by the State hereunder or any applicable statute of limitations, whichever



is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times.

If the Contractor supplies services to a State residential health care facility under the Mental Hygiene Administration, the Family Health Administration, the Alcohol and Drug Abuse Administration, or the Developmental Disabilities Administration, the Contractor agrees, in addition to the requirements above,:

- 24.1. That pursuant to 42 Code of Federal Regulations (C.F.R.) Part 420, the Secretary of Health and Human Services, and the Comptroller General of the United States, or their duly authorized representatives, shall be granted access to the Contractor's contract, books, documents and records necessary to verify the cost of the services provided under this contract, until the expiration of four years after the services are furnished under this contract; and
- 24.2. That similar access will be allowed to the books, documents and records of any organization related to the Contractor or controlled by the Contractor (as those terms are defined in 42 C.F.R. (420.301) if that organization is sub-contracting to provide services with a value of \$10,000 or more in a twelve-month period to be reimbursed through funds provided by this contract.

## **25. Compliance with Laws**

The Contractor hereby represents and warrants that:

- 25.1. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- 25.2. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- 25.3. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and,
- 25.4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **26. Cost and Price Certification**

By submitting cost or price information, the Contractor certifies to the best of its knowledge that the information submitted is accurate, complete, and current as of the date of its bid or offer.

The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its bid or offer, was inaccurate, incomplete, or not current.

## **27. Subcontracting; Assignment**

The Contractor may not subcontract any portion of the services provided under this Contract without obtaining the prior written approval of the Department's Contract Manager, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Department's Contract Monitor. Any subcontracts shall include such language as may be required in various clauses contained within this solicitation and attachments. The contract shall not be assigned until all approvals, documents and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## **28. Liability**

28.1 For breach of this Contract, negligence, misrepresentation or any other contract or tort claim, Contractor shall be liable as follows:

- (a) For infringement of patents, copyrights, trademarks, service marks and/or trade secrets, as provided in Section 7 of this Contract;
- (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property;
- (c) For all other claims, damages, losses, costs, expenses, suits or actions in any way related to this Contract, regardless of the form, Contractor's liability shall be limited to three (3) times the total dollar amount of the Contract value up to the date of settlement or final award of any such claim. Third party claims arising under Section 10, "Indemnification", of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's liability for third party claims arising under Section 10 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 10.

## **29. Parent Company Guarantee (If Applicable)**

[Corporate name of Parent Company] hereby guarantees absolutely the full, prompt and complete performance by "[Contractor name]" of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations and liabilities. "[Corporate name of Parent Company]" may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. "[Corporate name of Parent Company]" further agrees that if the State brings any claim, action, suit or proceeding against "[Contractor]", "[Corporate name of Parent Company]" may be named as a party, in its capacity as Absolute Guarantor.

## **30. Commercial Non-Discrimination**

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described at Md. Code Ann., State Finance and Procurement Article, Title 19. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against Contractor under Md. Code Ann., State Finance and Procurement



Article, Title 19, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth at Md. Code Ann., State Finance and Procurement Article, Title 19, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

### **31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the contractor until payment to the subcontractor is verified;
  - (b) Suspend all or some of the contract work without affecting the completion date(s) for the contract work;
  - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due;
  - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation:
- (a) Retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and
  - (a) An amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department, concerning a withheld payment between the Contractor and a subcontractor under this provision, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
  - (b) Be used as evidence on the merits of a dispute between the Department and the contractor in any other proceeding; or
  - (c) Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the Minority Business Enterprise program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule.
  - (b) This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.
    - iv. Verification shall include a review of:

- a. The Contractor's monthly report listing unpaid invoices over 30 days old from certified MBE subcontractors and the reason for nonpayment; and
  - b. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding 30 days and invoices for which the subcontractor has not been paid.
- (c) If the Department determines that the Contractor is in noncompliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
- (d) If the Department determines that the Contractor is in material noncompliance with MBE contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
  - i. Terminate the contract;
  - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
  - iii. Initiate any other specific remedy identified by the contract, including the contractual remedies required by this Directive regarding the payment of undisputed amounts.
- (e) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### **32. Contract Monitor**

The work to be accomplished under this Contract shall be performed under the direction of the Contract Monitor. All matters relating to the interpretation of this Contract shall be referred to the Contract Monitor for determination.

### **33. Notices**

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid as follows:

If to the State: Sharon R. Gambill, CPPB  
 Maryland Department of Health and Mental Hygiene  
 OFFICE OF PROCUREMENT AND SUPPORT SERVICES  
 201 West Preston Street, Room 416B  
 Baltimore, Maryland 21201

If to the Contractor: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

### **34. Compliance With HIPAA And State Confidentiality Law**

- 34.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq. and implementing regulations including 45 CFR Parts 160 and 164. The contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (Md. Code Ann. Health-General §§4-301 et seq., MCMRA). This obligation includes:



- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under federal HIPAA and State MCMRA and making the transmission of all electronic information compatible with the federal HIPAA requirements;
- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

34.2 If in connection with the procurement or at any time during the term of the contract, the Department determines that functions to be performed in accordance with the Services to Be Performed set forth in Part I constitute business associate functions as defined in HIPAA, the Contractor acknowledges its obligation to execute a business associate agreement as required by HIPAA regulations at 45 CFR §164.501.

34.3 Protected Health Information as defined in the HIPAA regulations at 45 CFR 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

**IN WITNESS THEREOF**, the parties have executed this Contract as of the date hereinabove set forth.

CONTRACTOR

STATE OF MARYLAND  
DEPARTMENT OF HEALTH AND  
MENTAL HYGIENE

By: \_\_\_\_\_

By: Joshua M. Sharfstein, M.D., Secretary

Date \_\_\_\_\_

Or Designee

\_\_\_\_\_

\_\_\_\_\_

Date

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 201 \_\_\_\_.

\_\_\_\_\_  
Assistant Attorney General

## ATTACHMENT B – BID/PROPOSAL AFFIDAVIT

### A. AUTHORITY

I HEREBY AFFIRM THAT:

I, \_\_\_\_\_ (print name), possess the legal authority to make this Affidavit.

### B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. "Discrimination" means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners. "Discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

#### B-1. CERTIFICATION REGARDING MINORITY BUSINESS ENTERPRISES.

The undersigned bidder hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, §14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;
- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

### C. AFFIRMATION REGARDING BRIBERY CONVICTIONS



I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

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D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract; or

(9) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(8) above, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

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#### E. AFFIRMATION REGARDING DEBARMENT

##### I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

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#### F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

##### I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):



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#### G. SUB-CONTRACT AFFIRMATION

##### I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

#### H. AFFIRMATION REGARDING COLLUSION

##### I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

- (1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;
- (2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

#### I. CERTIFICATION OF TAX PAYMENT

##### I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

#### J. CONTINGENT FEES

##### I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

#### K. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Procurement Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_ (print name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

Revised August, 2011



## ATTACHMENT C – CONTRACT AFFIDAVIT

### A. AUTHORITY

I HEREBY AFFIRM THAT:

I, \_\_\_\_\_ (print name), possess the legal authority to make this Affidavit.

### B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable box):

- (1) Corporation — ☐ domestic or ☐ foreign;
- (2) Limited Liability Company — ☐ domestic or ☐ foreign;
- (3) Partnership — ☐ domestic or ☐ foreign;
- (4) Statutory Trust — ☐ domestic or ☐ foreign;
- (5) ☐ Sole Proprietorship.

and is registered or qualified as required under Maryland Law. I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID

Number: \_\_\_\_\_ Address: \_\_\_\_\_

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_.

### C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

### D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 — 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the

State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$100,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

#### E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

##### I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
  - (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
  - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
  - (c) Prohibit its employees from working under the influence of drugs or alcohol;
  - (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
  - (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
  - (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
    - (i) The dangers of drug and alcohol abuse in the workplace;
    - (ii) The business's policy of maintaining a drug and alcohol free workplace;
    - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
    - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
  - (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), above;
  - (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the contract, the employee shall:
    - (i) Abide by the terms of the statement; and
    - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
  - (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;



(j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

(i) Take appropriate personnel action against an employee, up to and including termination; or  
(ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), above.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

(a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;  
(b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

#### F. CERTAIN AFFIRMATIONS VALID

##### I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 20\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_ (printed name of Authorized Representative and Affiant)

\_\_\_\_\_ (signature of Authorized Representative and Affiant)

Revised August, 2011

## **PRICING INSTRUCTIONS**

### **Instructions**

In order to assist Bidders in the preparation of their bid and to comply with the requirements of this solicitation, Bid Instructions and a Bid Form have been prepared. Bidders shall submit their bid on the form in accordance with the instructions on the form and as specified herein. Do not alter the forms or the bid form shall be rejected. The Bid Form is to be signed and dated, where requested, by an individual who is authorized to bind the Bidder to the prices entered on the Bid page.

The Bid Page is used to calculate the Bidder's TOTAL BID PRICE. Follow these instructions carefully when completing your Bid Page:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this IFB and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, i.e. .344 shall be 34 and .345 shall be 35.
- D) Any goods or services required through this IFB and proffered by the Bidder at **No Cost to the State** must be clearly entered as \$0.00 in either the Unit Price and, if appropriate, the Extended Price.
- E) Every blank in every Bid Page shall be filled in. Any blanks may result in the Bid being regarded as non-responsive and thus rejected. Any changes or corrections made to the Bid Page by the Bidder prior to submission shall be initialed and dated.
- F) Except as instructed on the form, nothing shall be entered on the Bid Page that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions shall render the Bid non-responsive.
- G) It is imperative that the prices included on the Bid Form have been entered correctly and calculated accurately by the Bidder and that the respective total prices agree with the entries on the Bid Form. Any incorrect entries or inaccurate calculations by the vendor will be treated as provided in COMAR 21.05.03E and 21.05.02.12.
- H) The "Total Contract Price" specified on the Bid Page is based on model quantities and will be used solely for price evaluation, comparison and selection for recommendation for award. The quantities indicated per week and per year are estimates only and are not a guarantee of any maximum or minimum quantities under the contract. The actual amount to be paid to the Contractor shall be calculated using the Firm Fixed Unit Prices specified on the Bid Page (Hourly Rates) and the actual number of hours provided by the Contractor.
- I) All bid prices entered on the Bid Page are to be fully loaded prices that include all costs/expenses associated with the provision of services required by this IFB. The bid prices shall include, but are not limited to: Labor, Profit/Overhead, General Operating, labor burden, and all other expenses except as expressly excluded in the IFB specifications. No other amounts including, but not limited to, overtime pay, shift differentials, or fees will be paid to the Contractor.



## Bid Page - Attachment D

The Bid shall contain all price information in the format specified on these pages. Complete the price sheets only as provided in the Bid Pricing Instructions. Do not amend, alter or leave blank any items on the Bid Page. If option years are included, Bidders must submit Bids for each option year. Failure to adhere to any of these instructions may result in the Bid being determined non-responsive and rejected by the Department.

### **NURSING HOME ADMINISTRATOR DEER'S HEAD HOSPITAL CENTER**

Price (hourly rate)

\$ \_\_\_\_\_ per hour x 1872 hours = \$ \_\_\_\_\_ (Total Contract Price)

(BASED UPON 24 HR/WK FOR 78 WEEKS)  
(BASIS FOR AWARD)

Submitted By:

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Location(s) from which services will be performed (City/State): \_\_\_\_\_

FEIN: \_\_\_\_\_

eMM #: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ -- \_\_\_\_\_

Fax: (\_\_\_\_\_) \_\_\_\_\_ -- \_\_\_\_\_

eMail: \_\_\_\_\_ @ \_\_\_\_\_

## ATTACHMENT E – CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

Reference COMAR 21.05.08.08

A. "Conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

B. "Person" has the meaning stated in COMAR 21.01.02.01B(64) and includes a Bidder, Contractor, consultant, or subcontractor or sub-consultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.

C. The Bidder warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.

D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain in detail—attach additional sheets if necessary):

E. The Bidder agrees that if an actual or potential conflict of interest arises after the date of this affidavit, the Bidder shall immediately make a full disclosure in writing to the procurement officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the Bidder has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the contract has been awarded and performance of the contract has begun, the Contractor shall continue performance until notified by the procurement officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_

(Authorized Representative and Affiant)

SUBMIT THIS AFFIDAVIT WITH BID



## ATTACHMENT F – NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT ("Agreement") is made as of this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, by and between the State of Maryland ("the State"), acting by and through its Department of Health and Mental Hygiene (the "Department") and \_\_\_\_ ( the "Contractor").

### RECITALS

WHEREAS, the Contractor has been awarded a contract (the "Contract") for \_\_\_\_ Contract No. DHMH OPASS (enter contract number) dated \_\_\_\_, 20\_\_\_\_ following an Invitation for Bids ("IFB") DHMH OPASS (enter IFB number); and

WHEREAS, in order for the Contractor to perform the work required under the Contract, it will be necessary for the State at times to provide the Contractor and the Contractor's employees, agents, and subcontractors (collectively the "Contractor's Personnel") with access to certain information the State deems confidential information (the "Confidential Information").

NOW, THEREFORE, in consideration of being given access to the Confidential Information in connection with the IFB and the Contract, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. Confidential Information means any and all information provided by or made available by the State to the Contractor in connection with the Contract, regardless of the form, format, or media on or in which the Confidential Information is provided and regardless of whether any such Confidential Information is marked as such. Confidential Information includes, by way of example only, information that the Contractor views, takes notes from, copies (if the State agrees in writing to permit copying), possesses or is otherwise provided access to and use of by the State in relation to the Contract.
2. Contractor shall not, without the State's prior written consent, copy, disclose, publish, release, transfer, disseminate, use, or allow access for any purpose or in any form, any Confidential Information provided by the State except for the sole and exclusive purpose of performing under the Contract. Contractor shall limit access to the Confidential Information to the Contractor's Personnel who have a demonstrable need to know such Confidential Information in order to perform under the Contract and who have agreed in writing to be bound by the disclosure and use limitations pertaining to the Confidential Information. The names of the Contractor's Personnel are attached hereto and made a part hereof as Exhibit A. Each individual whose name appears on Exhibit A shall execute a copy of this Agreement and thereby be subject to the terms and conditions of this Agreement to the same extent as the Contractor. Contractor shall update Exhibit A by adding additional names (whether Contractor's personnel or a subcontractor's personnel) as needed, from time to time.
3. If the Contractor intends to disseminate any portion of the Confidential Information to non-employee agents who are assisting in the Contractor's performance of the IFB or who will otherwise have a role in performing any aspect of the IFB, the Contractor shall first obtain the written consent of the State to any such dissemination. The State may grant, deny, or condition any such consent, as it may deem appropriate in its sole and absolute subjective discretion.
4. Contractor hereby agrees to hold the Confidential Information in trust and in strictest confidence, to adopt or establish operating procedures and physical security measures, and to take all other measures necessary to protect the Confidential Information from inadvertent release or disclosure to unauthorized third parties and to prevent all or any portion of the Confidential Information from falling into the public domain or into the possession of persons not bound to maintain the confidentiality of the Confidential Information.

5. Contractor shall promptly advise the State in writing if it learns of any unauthorized use, misappropriation, or disclosure of the Confidential Information by any of the Contractor's Personnel or the Contractor's former Personnel. Contractor shall, at its own expense, cooperate with the State in seeking injunctive or other equitable relief against any such person(s).
6. Contractor shall, at its own expense, return to the Department, all copies of the Confidential Information in its care, custody, control or possession upon request of the Department or on termination of the Contract.
7. A breach of this Agreement by the Contractor or by the Contractor's Personnel shall constitute a breach of the Contract between the Contractor and the State.
8. Contractor acknowledges that any failure by the Contractor or the Contractor's Personnel to abide by the terms and conditions of use of the Confidential Information may cause irreparable harm to the State and that monetary damages may be inadequate to compensate the State for such breach. Accordingly, the Contractor agrees that the State may obtain an injunction to prevent the disclosure, copying or improper use of the Confidential Information. The Contractor consents to personal jurisdiction in the Maryland State Courts. The State's rights and remedies hereunder are cumulative and the State expressly reserves any and all rights, remedies, claims and actions that it may have now or in the future to protect the Confidential Information and to seek damages from the Contractor and the Contractor's Personnel for a failure to comply with the requirements of this Agreement. In the event the State suffers any losses, damages, liabilities, expenses, or costs (including, by way of example only, attorneys' fees and disbursements) that are attributable, in whole or in part to any failure by the Contractor or any of the Contractor's Personnel to comply with the requirements of this Agreement, the Contractor shall hold harmless and indemnify the State from and against any such losses, damages, liabilities, expenses, and costs.
9. Contractor and each of the Contractor's Personnel who receive or have access to any Confidential Information shall execute a copy of an agreement substantially similar to this Agreement and the Contractor shall provide originals of such executed Agreements to the State.
10. The parties further agree that:
  - a. This Agreement shall be governed by the laws of the State of Maryland;
  - b. The rights and obligations of the Contractor under this Agreement may not be assigned or delegated, by operation of law or otherwise, without the prior written consent of the State;
  - c. The State makes no representations or warranties as to the accuracy or completeness of any Confidential Information;
  - d. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement;
  - e. Signatures exchanged by facsimile are effective for all purposes hereunder to the same extent as original signatures; and
  - f. The Recitals are not merely prefatory but are an integral part hereof.

Contractor: \_\_\_\_\_

Department of Health & Mental  
Hygiene:

By: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_

Printed Name and Title:

Printed Name and Title:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## EXHIBIT A

### LIST OF BIDDER'S EMPLOYEES AND AGENTS WHO WILL BE GIVEN ACCESS TO THE CONFIDENTIAL INFORMATION

Printed Name and Address of Individual or Agent	Employee (E) or Agent (A)	Signature	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

## EXHIBIT B

### CERTIFICATION TO ACCOMPANY RETURN OF CONFIDENTIAL INFORMATION

I AFFIRM THAT:

To the best of my knowledge, information, and belief, and upon due inquiry, I hereby certify that: (i) all Confidential Information which is the subject matter of that certain Agreement by and between the State of Maryland and \_\_\_\_\_ ("Bidder") dated \_\_\_\_\_, 20\_\_\_\_ ("Agreement") is attached hereto and is hereby returned to the State in accordance with the terms and conditions of the Agreement; and (ii) I am legally authorized to bind the Bidder to this affirmation.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, HAVING MADE DUE INQUIRY.**

DATE: \_\_\_\_\_

NAME OF BIDDER: \_\_\_\_\_

BY: \_\_\_\_\_  
(Signature)

TITLE: \_\_\_\_\_  
(Authorized Representative and Affiant)

## ATTACHMENT G – LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS

### Living Wage Requirements for Service Contracts

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry. The Living Wage generally applies to a Contractor or Subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
- (1) A Contractor who:
    - (A) Has a State contract for services valued at less than \$100,000, or
    - (B) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
  - (2) A Subcontractor who:
    - (A) Performs work on a State contract for services valued at less than \$100,000,
    - (B) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
    - (C) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(B) above, or B (3) or C below.
  - (3) Service contracts for the following:
    - (A) Services with a Public Service Company;
    - (B) Services with a nonprofit organization;
    - (C) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
    - (D) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid



the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.

- E. Each Contractor/Subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner of Labor and Industry shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's Website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.
- H. A Contractor/Subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/Subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/Subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/Subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry Web site <http://www.dlir.state.md.us/labor/> and clicking on Living Wage for State Service contracts.

## ATTACHMENT G-1- MARYLAND LIVING WAGE REQUIREMENTS AFFIDAVIT

### Maryland Living Wage Requirements-Service Contracts

Contract No. \_\_\_\_\_

Name of Contractor \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

### If the Contract is Exempt from the Living Wage Law

The Undersigned, being an authorized representative of the above named Contractor, hereby affirms that the Contract is exempt from Maryland's Living Wage Law for the following reasons (check all that apply):

- ☐ Bidder/Offeror is a nonprofit organization
- ☐ Bidder/Offeror is a public service company
- ☐ Bidder/Offeror employs 10 or fewer employees and the proposed contract value is less than \$500,000
- ☐ Bidder/Offeror employs more than 10 employees and the proposed contract value is less than \$100,000

### If the Contract is a Living Wage Contract

- A. The Undersigned, being an authorized representative of the above named Contractor, hereby affirms our commitment to comply with Title 18, State Finance and Procurement Article, Annotated Code of Maryland and, if required, to submit all payroll reports to the Commissioner of Labor and Industry with regard to the above stated contract. The Bidder/Offeror agrees to pay covered employees who are subject to living wage at least the living wage rate in effect at the time service is provided for hours spent on State contract activities, and to ensure that its Subcontractors who are not exempt also pay the required living wage rate to their covered employees who are subject to the living wage for hours spent on a State contract for services. The Contractor agrees to comply with, and ensure its Subcontractors comply with, the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate established by the Commissioner of Labor and Industry, automatically upon the effective date of the revised wage rate.
- B. \_\_\_\_\_ (initial here if applicable) The Bidder/Offeror affirms it has no covered employees for the following reasons: (check all that apply):

- ☐ The employee(s) proposed to work on the contract will spend less than one-half of the employee's time during any work week on the contract



- ☐ The employee(s) proposed to work on the contract is 17 years of age or younger during the duration of the contract; or
- ☐ The employee(s) proposed to work on the contract will work less than 13 consecutive weeks on the State contract.

The Commissioner of Labor and Industry reserves the right to request payroll records and other data that the Commissioner deems sufficient to confirm these affirmations at any time.

Name of Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

Witness Name (Typed or Printed) \_\_\_\_\_

Witness Signature \_\_\_\_\_ Date \_\_\_\_\_

**Submit This Affidavit with Bid/Proposal**

## ATTACHMENT H – BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and among the Maryland Medical Assistance Program, a unit of the Maryland Department of Health and Mental Hygiene (herein referred to as “Covered Entity”) and \_\_\_\_\_ (hereinafter known as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties”.

WHEREAS, Covered Entity have a business relationship with Business Associate that is memorialized in a separate agreement (the “Underlying Agreement”) pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 including all pertinent regulations (45 CFR Parts 160 and 64), as amended from time to time, issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (collectively, “HIPAA”); and

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§4-301 *et seq.*) (“MCMRA”); and

WHEREAS, this Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof;

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

### I. DEFINITIONS.

- A. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45CFR §164.502(g).
- B. Breach. “Breach” shall have the same meaning as the term “breach” in 45 CFR § 164.402.
- C. Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501.
- D. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- E. Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity
- F. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §164.501.



- G. Secretary. "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.
- H. Unsecured Protected Health Information. "Unsecured Protected Health Information" or "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance or as otherwise defined in the §13402(h) of the HITECH Act.

## **II. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE.**

- A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule.
- B. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e).
- C. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as Covered Entity.

## **III. DUTIES OF BUSINESS ASSOCIATE RELATIVE TO PHI.**

- A. Business Associate shall not use or disclose PHI other than as permitted or required by this Agreement, the MCMRA, or as Required By Law.
- B. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- C. Business Associate shall immediately notify Covered Entity of any use or disclosure of PHI in violation of this Agreement
- D. In addition to its obligations in Section III.C, Business Associate shall document and notify Covered Entity of a Breach of Unsecured PHI. Business Associate's notification to Covered Entity hereunder shall:
  - 1. Be made to Covered Entity without unreasonable delay and in no case later than 50 calendar days after the incident constituting the Breach is first known, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security. For purposes of clarity for this Section III.D.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 CFR Part E within 50 calendar days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA;
  - 2. Include the names of the Individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
  - 3. Be in substantially the same form as Exhibit A hereto; and
  - 4. Include a draft letter for the Covered Entity to utilize to notify the Individuals that their Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:

- a) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
  - b) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
  - c) Any steps the Individuals should take to protect themselves from potential harm resulting from the Breach;
  - d) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breaches; and
  - e) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- E. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.
- F. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- G. To the extent applicable, Business Associate shall provide access to Protected Health Information in a Designated Record Set at reasonable times, at the request of Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.
- H. To the extent applicable, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual.
- I. Business Associate shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.
- J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Should an individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Business Associate agrees to promptly provide Covered Entity with information in a format and manner sufficient to respond to the individual's request.
- K. Business Associate shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.
- L. Business Associate shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate.



- M. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).
- N. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

#### **IV. TERM AND TERMINATION.**

- A. Term. The Term of this Agreement shall be effective as of \_\_\_\_\_, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section IV.
- B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:
  - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement;
  - 2. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
  - 3. If neither termination nor cure is feasible, report the violation to the Secretary.
- C. Effect of Termination.
  - 1. Except as provided in paragraph C(2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the Protected Health Information.
  - 2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.
  - 3. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement or HIPAA or an intentional or grossly negligent disclosure of information protected

by the MCMRA, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

**V. CONSIDERATION.** Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

**VI. REMEDIES IN EVENT OF BREACH.** Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

**VII. MODIFICATION; AMENDMENT.** This Agreement may only be modified or amended through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

**VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES.** Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

**IX. COMPLIANCE WITH STATE LAW.** The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy or Security Rules and the MCMRA conflict regarding the degree of protection provided for protected health information, Business Associate shall comply with the more restrictive protection requirement.

**X. MISCELLANEOUS.**

- A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- B. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Ramiek James, Privacy Officer  
Department of Health & Mental Hygiene  
Division of Corporate Compliance & Integrity  
201 W. Preston Street, Room 522  
Baltimore, MD 21201-2301  
Phone: (410) 767-5411



- D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: \_\_\_\_\_

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

**COVERED ENTITY:**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**BUSINESS ASSOCIATE:**

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

